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In re Patent No. 7,878,800
Issued: February 1, 2011
Application No. 10/534,493
Filed: June 6, 2005
Attorney Docket No. JPD-3687-114

OFFICE OF PETITIONS
: **DECISION ON REQUEST**
: **FOR RECONSIDERATION**
: **OF PATENT TERM ADJUSTMENT**

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(d)", filed March 16, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 935 days to 1060 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is being considered in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Applicant argues that the period pursuant to 37 C.F.R. § 1.702(a) should be 457 days and the period pursuant to 37 C.F.R. § 1.702(a) should be 997 days, minus applicant delay of 394 days, thus the patent term adjustment should be 1060 days.

Applicant's arguments have been considered, but not found to be persuasive.

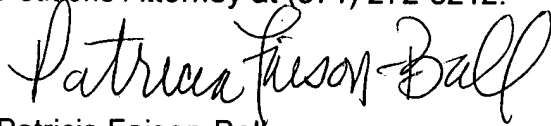
The period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) is 457 days calculated from June 6, 2005, the 371 completion date, and 12 days pursuant to 37 CFR 1.702(a)(2). The delay pursuant to 37 CFR 1.702(b), is based on a national stage commencement date under 35 U.S.C. 371(f) of May 12, 2005, not May 10, 2005. Accordingly, the "B" delay period, the over three year period begins on May 12, 2008, the date the national stage commenced under 35 U.S.C. 371(f), and ends on February 1, 2011, the day the patent issued.

Applicant's calculation however, fails to account for the filing of a Notice of Appeal on February 19, 2009 and a Notice of Appeal on September 15, 2010. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). The 79 days of the over three year period consumed by appellate review, beginning on February 19, 2009 and ending on May 8, 2009 and the 44 days of the over three year period period consumed by appellate review beginning on September 15, 2010 and ending on October 28, 2010, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). The Office has also determined that the period of overlap is 12 days. Thus, B delay is 872 days, considering the 12 days of overlap. As such, the patent term adjustment is 935 (457 + 12 "A delay" days + 872 "B delay" days - 12 days of overlap - 394 Applicant delay days) days, not 1060 days.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the required fee of \$200.00 set forth in 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions